

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

IMMIGRANT LEGAL ADVOCACY
PROJECT and AMERICAN CIVIL
LIBERTIES UNION OF MAINE
FOUNDATION,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Civil Action No. 21-cv-00066

Defendant.

**SUPPLEMENTAL DECLARATION OF FERNANDO PINEIRO IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the FOIA Director of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office. I incorporate by reference the facts set forth in my declaration previously filed in this case dated August 30, 2022 (my “First Declaration”).
2. I make this supplemental declaration in my official capacity in further support of Defendant ICE’s Motion for Summary Judgment in the above-captioned action. The statements contained in this supplemental declaration are based upon my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

II. ADDITIONAL INFORMATION ABOUT ERO'S SEARCH IN RESPONSE TO PLAINTIFFS' FOIA REQUEST

3. My First Declaration at Paragraph 21 described a March 30, 2021, search by a Management and Program Analyst (“MPA”) in ERO’s Policy Office of the ICE Policy Manual and the ERO Policy Library using the terms “Scarborough” and “detention.” To clarify, this search used the terms “Scarborough” and “detention” together. During this litigation, the ERO Policy Office then conducted an additional search of the ICE Policy Manual and the ERO Policy Library using the term “Scarborough” alone without “detention.” The additional search resulted in no records responsive to Plaintiffs’ FOIA Request from either the ICE Policy Manual or the ERO Policy Library. It would be unduly burdensome for ICE to search for and review for responsiveness every single document contained in the ICE Policy Manual and the ERO Policy Manual without any limiting search terms.

4. My First Declaration at Paragraph 25 described a March 25, 2021, search by an SSDO for the Boston Field Office. As my First Declaration indicated, this SSDO, who oversaw the daily operations in the state of Maine including the supervision of detainee transfers and who would be involved in plans for ERO facilities in the state of Maine, searched his Outlook email account for the terms “ICE transfers,” “Detainee transfers,” “Cumberland County Jail,” “Sheriff Kevin Joyce,” “Scarborough office,” “Zoning Approval,” “Scarborough office lease,” and “COVID.” Without conceding the adequacy of this SSDO’s search, in the interest of transparency and cooperation, ICE has tasked a supplemental search of the SSDO’s computer files, using the terms previously listed above, as well as the term “Scarborough” on its own, as well as an additional search of his Outlook email using the standalone term “Scarborough.” Any responsive records that have not been previously produced will be produced to Plaintiffs, subject to legitimate withholdings.

III. THE DEPORTABLE ALIEN CONTROL SYSTEM & ERO INSPECTION REPORTS

5. The Deportable Alien Control System (“DACS”) is a case management system that tracks detainees. DACS provides management information concerning the status and disposition of an individual detainee’s case and is used to track the location of detained individuals, as well as the status of individuals’ immigration court hearings. Factors considered in deciding whether to apprehend or detain an individual are not recorded in DACS. DACS is not a record regarding policies. The DACS data contains information following the initial processing of a criminal alien, with much of the information coming from the I-213 Record of Deportable Alien, which includes without limitation place of incarceration, federal, state or county identification number, data and type of conviction, release date and appropriate criminal charge code. A search of the entries from DACS for those people detained at Scarborough, if any, would not result in records responsive to Plaintiff’s request for “any records regarding policies,” as DACS is a case management tracking system and does not contain any policy guidance.

6. ERO inspection reports are a form worksheet that inspectors fill out to ensure that detainees in ICE custody are housed in the least restrictive environment consistent with the safety and security of the detained population and orderly facility operations. Without conceding the adequacy of ICE’s search, in the interest of transparency and cooperation, ICE is in the process of conducting a supplemental search for ERO inspection records relating to the Scarborough, Maine facility, and will produce responsive records not previously produced, if any, to Plaintiffs subject to legitimate withholdings.

IV. **JURAT CLAUSE**

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Signed this 16th the day of December 2022.

Fernando Pineiro
FOIA Director
Freedom of Information Act Office
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009